

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4799 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PAMAN @ PAWAN NANDLAL

SINDHI

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ANIL S DAVE for Petitioner

MS.SIDDHI TALATI, AGP.for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the detention order dated 15.6.1998 passed by the Commissioner of Police, Ahmedabad City under section 3(2) of the prevention of Antisocial Activities Act (for short "PASA") is under challenge with the request that the petitioner be released from illegal detention after quashing the detention order.

The brief facts are that the Detaining Authority aforesaid considered in the grounds of detention four cases registered against the petitioner under Bombay Prohibition Act and also considered the statements of two confidential witnesses and was satisfied from the aforesaid materials that the petitioner is a bootlegger and his activities as such were prejudicial for maintenance of public order. Consequently the impugned order was passed. This order has been challenged only on two grounds.

The first ground is that the prejudicial activities cannot be said to be prejudicial for maintenance of public order and at the most these activities can be said to be prejudicial for maintenance of law and order. As such preventive detention is uncalled for. From the grounds of detention it appears that the subjective satisfaction of the Detaining Authority that the petitioner is a bootlegger was based on material on record viz. four registered cases under Bombay Prohibition Act against the petitioner and some support was also rendered in this regard by the two witnesses who requested that their names and identities be kept confidential. However, on the question of activities being prejudicial for maintenance of public order the four registered cases under Bombay Prohibition Act against the petitioner could not be considered as activities prejudicial for maintenance of public order because nothing is indicated in the grounds of detention that on these four occasions when the premises of the petitioner was raided and country made liquor was recovered, he created any situation or offered resistance to the raid, search and seizure or created situation prejudicial for maintenance of public order. As such these registered cases could not be pressed in service for concluding that the activities of the petitioner were prejudicial for maintenance of public order.

Sofar as the statements of two witnesses are concerned their narration indicates that those incidents were nothing but situation disturbing law and order and not public order and those incidents do not stand on better footing than two incidents cited and narrated by two witnesses in the case of M.J.Shaikh Vs. M.M.Mehta, Commissioner of Police 1995(2) GLR Pg.1268. Thus, the activities of the petitioner could not be said to be prejudicial for maintenance of public order and as such the detention order is rendered illegal.

The second ground is that two representations

were sent by the detenu one by the Advocate of the detenu on 22.6.1992 which was returned to the Advocate of the detenu on 25.6.1998 and this representation was not considered on technical ground that the representation did not bear signature or thumb impression of the detenu. The second representation dated 24.6.1998 was sent directly by the detenu from jail which was considered by the State Government and rejected on 1.7.1998. A counter affidavit has been filed from the side of the respondent. Learned Assistant Government Pleader however contended that the second representation was rejected by the State Government on 1.7.1998. This was not the representation sent by the Advocate of the detenu but was a representation sent directly by the detenu. The learned Assistant Government Pleader however pointed out from the record that the contents of the two representations dated 20.6.1998 and 24.6.1998 were different. There is nothing on record to indicate that when second representation was made by the detenu himself he had contacted his Advocate. As such non consideration of his representation dated 22.6.1998 having different grounds, has rendered the detention as well as continued detention of the petitioner illegal. Since this representation was sent by the Advocate indicating that it was sent under the instructions of the detenu it should have considered and not that it could be returned on identical grounds. Such casual manner of dealing with such representation in technical way was not approved by the Apex Court in Balchand Chorasias Vs. Union of India, AIR 1978 SC Pg.297.

Thus for the reasons stated above the impugned order cannot be sustained. The writ petition succeeds and is hereby allowed. The impugned order of detention dated 15.6.1998 is hereby quashed. The petitioner shall be released from custody forthwith unless he is wanted in some other case.

(D.C.Srivastava, J)

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m.m.bhatt